U.S. ENVIRONMENTAL PROTECTION AGENCY

40 C.F.R. Part 300

Comments of Carrier Corporation on
Proposed Listing of Collierville, Tennessee,
Site on the National Priorities List

August 23, 1988

ENVIRONMENTAL PROTECTION AGENCY

40 C.F.R. Part 300

Comments of Carrier Corporation on
Proposed Listing of Collierville, Tennessee,
Site on the National Priorities List

The following comments are submitted by Carrier Corporation ("Carrier") in response to the proposed inclusion of Carrier's plant in Collierville, Tennessee, by the Environmental Protection Agency ("EPA") on the National Priorities List ("NPL"). 53 Fed. Reg. 23988 (June 24, 1988). These comments also address the EPA policy regarding listing RCRA "converter" facilities on the NPL under which the Collierville plant has been proposed for listing on the NPL. 53 Fed. Reg. 23978 (June 24, 1988).

Part I of these comments explains how EPA has misapplied the Hazard Ranking System ("HRS") at the Collierville site, and when properly applied, the HRS score would be below 28.50, thus eliminating the Collierville site's eligibility for placement on the National Priority List ("NPL"). Part II notes the procedural defects in the proposed listing in that it inappropriately ignores the remedial planning already in progress pursuant to agreements between the State of Tennessee and Carrier, and between the City of Collierville and Carrier. Finally, Part III details other statutory bases that EPA might consider in lieu of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for use in remedying this site. These sources include the Federal Safe Drinking Water Act and the Tennessee superfund statute.

I. EPA Misapplied the Hazard Ranking System (HRS) to the Collierville Site. Properly Applied, the Score Is Below 28.50 So That Collierville Should Not Be Placed on the National Priorty List.

After reviewing the rulemaking record concerning EPA's proposal to place Collierville on the National Priority List (NPL), Carrier believes that EPA has seriously miscalculated the Hazard Ranking System (HRS) Score at 35.57.

These mistakes include greatly overstating the volume of hazardous substances involved in the alleged releases, ignoring the availability of alternative water supplies, and underestimating the effective distance between the location of the alleged release and the nearest well. If these mistakes are corrected, the resulting HRS score is below 28.50, so that the Collierville site does not qualify for placement on the National Priority List (NPL).

A. EPA Greatly Overestimated the Volume of TCE Released, Thereby Improperly Inflating the Score for Rating Factor Four, Waste Characteristics.

In its scoring, EPA contends that there have been three separate and distinct releases of trichloroethylene (TCE) at the Collierville site from:

(1) a waste water lagoon closed in 1980;

(2) a 1979 boil-over from a vapor degreaser; and

(3) a 1985 leak.

Carrier takes issue with EPA's scoring of the lagoon and the 1979 boil-over from the vapor degreaser.

1. EPA Violated Its Own Procedures In Overestimating the Volume of TCE in the Lagoon.

EPA has treated the entire volume of the lagoon -- 214 cubic yards -- as if it were pure TCE. Thus EPA contends that the volume of TCE present at the facility from the lagoon is equivalent to 856 drums of TCE.

This estimate is a violation of EPA's instructions for use of HRS scoring and is contrary to the facts. The contents of the lagoon were mostly dirt, paint sludge, and water. A low concentration of TCE -- less than 370 ppm -- has been alleged. The materials in the lagoon were the solids removed from the clarifier in Carrier's waste water treatment system. That waste treatment system handled ash from the paint hook burn-off oven and sludge from phosphating iron parts prior to painting. There is no known or alleged placement of TCE still bottoms in the lagoon or the clarifer. TCE was not part of the normal waste stream handled by the clarifier; thus, the solids from the clarifer put in the lagoon did not normally contain TCE.

Under these circumstances, page 19 of EPA Publication HW-10 instructs that EPA should "not include amounts of contaminated soil and water; in such cases, the amount of contaminating hazardous substances may be estimated." (emphasis supplied). In this case, the maximum concentration of TCE in the lagoon is allegedly 370 ppm (mg/kg). Thus the quantity of TCE in the lagoon is properly calculated as follows:

Volume of lagoon: 214 cubic yards

Maximum Concentration of TCE 370 ppm = 370 mg/kg

$$214\ yd^3 \times \frac{2000\ lbs}{1\ yd^3} \times \frac{1\ kg}{2.2\ lbs} \times \frac{370\ mg}{1\ kg} = 71.982\ kg \text{ or } 158.36\ lbs = 0.317\ Drums$$

This calculation establishes a TCE quantity of significantly less than one drum.

2. EPA's Estimate of the 1979 Release Overstated the Amount TCE Reaching the Soil.

According to EPA's evaluation of the 1979 release, 2000 gallons of TCE were released when the filter cover on a degreaser failed. In Carrier's view, this estimate seems likely to overstate the volume of TCE present in the soil at the facility because it fails adequately to consider the following factors operating to reduce the volume:

(a) the TCE was at or near the boiling point (188°F) when the equipment failure occurred so that substantial volatilization -- by boiling and by evaporation -- occurred;

(b) the Collierville fire department hosed down the parking lot where the spill occurred within about an hour of the discharge, washing the material into the adjacent creek;

(c) the asphalt parking lot materials were dug up and removed by Carrier shortly after the discharge;

(d) the material from the degreaser was not pure TCE, but contained oil and grease as well.

a. Volatilization of the TCE.

The 1979 release occurred when the filter cover on a vapor degreaser failed, causing the escape of boiling or near boiling TCE. In order to operate, the degreaser heated the TCE to a temperature at or near its boiling point, 188°F.

According to the report filed by the Collierville fire department at the time of the incident on June 21, 1979, the TCE discharged onto an asphalt parking lot adjacent to the plant. (Attached as Exhibit One). The discharge occurred about 3:30 a.m. that day. According to the National Weather Service, the temperatures between 3 and 5 a.m. that morning were between 72° and 82°F. Winds were between 6 and 26 miles per hour. At these temperatures and wind conditions, Carrier believes that a substantial proportion of the TCE would have volatilized, both from boiling and from evaporation. Carrier believes that discharge on the parking lot -- a relatively impermeable surface when compared to soil -- would have enhanced this volatilization. This volatilizated portion of the TCE did not reach the soil at the facility.

b. Discharge to Surface Water Physically Reduced the Amount of TCE Reaching the Soil at the Facility.

According to the records of the Collierville fire department, the fire department hosed down the parking lot within about an hour of the time of the discharge. The water from this hosing down operation discharged to the Nonconnah Creek, where it flowed away from the facility. The wash waters thus physically transported much of the TCE away from the facility, reducing the quantity reaching the soil at the facility.

c. Removal of the Asphalt Parking Lot Materials Further Reduced the Amount of TCE Reaching the Soil.

Some of the TCE that reached the parking lot was absorbed by the asphalt, as evidenced by some degradation of the surface. Much of the asphalt surface was excavated and removed in the days following the discharge. With the removal of these degraded asphaltic materials, much of the TCE was also physically removed, thereby reducing the quantity reaching the soil at the facility.

This removal mechanism may have proved especially significant because TCE will tend to mix preferentially with a petroleum-based product such as asphalt. Because these quantities of TCE were contained in the asphalt and did not reach the soil, they should not be counted for HRS scoring purposes. This is supported by soil borings takes after excavation and disposal of the asphalt surface. Five soil borings were conducted with six samples collected from each boring at one foot intervals. At a detection limit of 0.01 ppm, no TCE was detected in any sample. Further, in 1986, soil samples were taken by the Tennessee Department of Health and Environment. Eight samples were taken, with six showing no detectable TCE at a 0.01 ppm detection limit and two with a maximum of 0.095 ppm. These data demonstrate that very little TCE actually was received by soil at the facility.

d. The TCE Involved in the Discharge Probably Contained Some Oil and Grease.

Because the TCE involved in the 1979 incident came from a vapor degreaser, it was probably not pure TCE, but may have

contained oil and grease from the degreasing operation, thereby further reducing the volume of TCE.

e. The Volume Of TCE in the 1979 Release Is Estimated At No More Than 20 Drums.

Carrier estimates that no more than 50% of the 2000 gallons of TCE estimated by EPA to have been released ever entered the soils at the site and that, therefore, the correct quantity for this release is no more than:

$$2000 \text{ gal} \times \frac{1 \text{ Drum}}{50 \text{ gallons}} \times 50\% = 20 \text{ Drums}$$

B. EPA Failed to Recognize that Collierville Has an Alternate Source of Unthreatened Drinking Water.

In EPA's scoring, it gave the parameter for ground water use an assigned value of 3. The proper value should be 2 because the City of Collierville has an alternate source of unthreatened drinking water available through its connection to the Germantown Water System, from which Collierville has purchased water in the past. In addition, below the Memphis Sands Aquifer is the Fort Pillow Sands Aquifer which is separated from the Memphis Sands by the Flour Island Formation, a confining layer of low permeability between 160 and 350 feet thick. This other aquifer is also thought to be available as a source of drinking water.

With these readily available water sources, Carrier believes the proper description of Ground Water Use is "drinking water with municipal water from alternate unthreatened sources presently available..." so that the proper assigned value is 2, not 3.

C. Because of the Complex Geology at the Facility, EPA Underestimated the Distance to the Nearest Well and Overstated the HRS Score.

The geology and stratigraphy of the site are complex and have a direct bearing on the calculation of distance between the hazardous substance and the nearest well.

The upper unsaturated zone is separated from the Memphis Sands aquifer by a confining clay layer beneath the Collierville site. This clay aquitard appears to thin out toward the eastern edge of the site and disappears beneath Byhalia Road. Because the purpose of measuring the distance to the nearest well is to quantify the distance a substance must migrate to affect that well, for the Carrier Collierville site, the place where the hazardous substance is closest to the nearest well is not at the lagoon, but rather at Byhalia Road nearest the location of the 1979/1985 releases. This distance is about 2100 feet and results in a proper assigned value of 3. Carrier is submitting an appropriate map for EPA to use to verify this assertion.

Therefore, when the HRS matrix is consulted, the proper value for the combination of distance to the nearest well and population served is 35.

D. The Revised HRS Score Is Less Than 28.50.

The above corrections lead to a proper calculation of an HRS score as follows:

1.	Observed Release	45
2.	Route Characteristics	N/A
3.	Containment	N/A

4. Toxicity/Persistence 12
   Quantity +1 = 13

5. Ground Water Use 3 x 2 = 6
   Distance to Well/Population + 35 = 41

6. 1 x 4 x 5 = 45 x 13 x 41 = 23985

7. Sgw = 23985/57,330 x 100 = 41.84

Since there is no applicable S_{sw} or S_a, S_m = Sgw/1.73

S_m = 41.84/1.73 = 24.18

Based on this scoring, the Collierville site does not meet the applicable minimum score of 28.50 and is therefore not qualified for placement on the National Priorities List.

II. EPA Policy Against Basing HRS Scoring Upon Current Conditions Is Particularly Inappropriate and Procedurally Defective At the Collierville Site Because Carrier Is Working Under Other Authority to Provide an Alternate Source of Drinking Water.

EPA performed its Hazard Ranking System ("HRS") scoring of the Collierville site in 1986. As a result of that evaluation, the site received an HRS score of 35.57, based in large part upon the presence of TCE in wells at the City of Collierville's Water Plant No. 2 and the size of the population served by water from that plant.

Prior to EPA's June 1988 publication of its proposal to place the Collierville site on the NPL, Carrier had reached agreement in principle with the City of Collierville to fund the City to drill alternate municipal supply wells to replace the two wells currently supplying Water Plant Number 2. The agreement contemplates that the City will select an alternate site for the new wells. When the new wells become operational, the agreement contemplates that the existing wells will be permanently closed.

Carrier is continuing to work with the City to provide a permanent, alternate source of drinking water. Carrier will submit supplemental comments as these agreements are finalized, and as on-site construction work proceeds.

EPA's proposed listing and the scoring upon which it is based rely on long-standing EPA policy to conduct its HRS evaluation of a site as if no response action had ever been conducted at that site. This is a policy EPA has asserted as a per se rule on numerous occasions, contrary to the teaching of McLouth Steel v. Thomas, 838 Fed. 2d 1317 (D.C. Cir. 1988). For example, in its July 16, 1982, promulgation of revisions to the National Contingency Plan ("NCP"), EPA averred:

> The Agency does not believe that previous response actions should be taken into account in scoring a release. The HRS makes clear that releases are scored on the basis of conditions that existed prior to any response actions. Allowing partial response to affect the score would be a disincentive for public agencies to undertake any clean-up action because Federal funding for full-scale clean-up might not be available. In addition, if responsible parties have undertaken partial or temporary clean-up actions prior to scoring, releases might be excluded from the NPL without sufficient considerations of the need for further action or permanent remedy.

47 Fed. Reg. 31180, 31187 (July 16, 1982). The Agency has reasserted this position as a blanket proscription on a number of occasions. For example, in its 1986 amendments to the NCP, EPA stated:

> Many commenters stated that EPA should take current conditions into account when scoring a site where response actions have reduced the hazards posed by the site. In response, EPA computes HRS scores and lists sites on the basis of conditions existing before any

> response actions are taken in order to represent the full scope of the original problem presented by a site. This position was explained in the preamble to the final revisions to the NCP [quoted above], and in previous NPL rulemakings.... The Agency's position remains unchanged.

51 Fed. Reg. 21054, 21064 (June 10, 1986) (citations omitted).

Application of this policy to the Collierville site is particularly inappropriate for several reasons. First, as demonstrated above, the HRS score assigned to the site is incorrect. The policy is further inappropriate in this case because of the actions taken to rectify conditions in the City of Collierville's water supply, actions to study and remediate conditions at the site in general, the parties involved in these activities, the fact that the facility is a converter, and the availability of alternative regulatory mechanisms for cleaning up the site.

In the first instance, the blanket imposition of this policy is inappropriate because of the activities undertaken to date by Carrier and the City of Collierville to provide an alternative water supply to the persons (estimated by EPA to number 12,225) served by Water Plant No. 2.[1/] Second, not only is Carrier working closely with officials from the City of Collierville to

---

1/ It should be noted that measured levels of TCE in the finished water from Water Plant No. 2 has never been found to exceed 3 parts per billion ("ppb"). Concentrations average 1.12 ppb. EPA has set a maximum contaminant level ("MCL") for TCE pursuant to the Safe Drinking Water Act, 42 U.S.C. §300f et seq., of 5 ppb. 40 C.F.R. §141.61(a). MCL's are measured in finished water (40 C.F.R. §141.2). Consequently, finished water from Water Plant No. 2 has never come near to exceeding the MCL for TCE.

provide an alternative water supply, but it has been conducting this effort, as well as other investigatory activities at the site, in conjunction with and under the supervision of representatives of the State of Tennessee. Consequently, the Agency's concern that due consideration will not be given to the need for further action or a remedy beyond providing a new water supply does not apply in this case.

The fact that EPA has deemed the Collierville facility a converter under RCRA, as well as the other regulatory regimes available to address the site (discussed subsequently), also obviate the Agency's concern that further actions or a permanent remedy, if needed, will not be provided. The Collierville facility is not the classic abandoned hazardous waste site that CERCLA was designed to address. Rather the facility is an ongoing, financially sound, manufacturing operation which, at least in the Agency's view, remains amenable to corrective action orders under section 3008(h) of RCRA. In this regard, the Collierville facility differs from many other types of RCRA sites that EPA has proposed for listing on the NPL. Under the Agency's analysis, it is not one of the sites subject to RCRA but immune to subtitle C regulations (see 41 Fed. Reg. 21057, ff). Nor is it a site subject to subtitle C that is unable to finance cleanup or which has demonstrated unwillingness to pay. Id. If, as EPA asserts, converter facilities like the Collierville site are subject to RCRA 3008(h) corrective action orders, the Agency has an existing non-CERCLA statutory mechanism at its disposal with which it can assure itself that further investigation and/or remediation will be provided.

Further, Carrier believes that EPA should not place total and sole reliance on the HRS score for determining whether to place sites on the NPL. This is in accord with EPA's stated policy, which provides:

> The HRS was developed pursuant to section 105(8)(A) of CERCLA. This section provides for the development of criteria and priorities based on relative risk or danger to public health or welfare or the environment, taking into account the following considerations: (1) The population at risk, (2) the hazard potential of the hazardous substances at such facilities, (3) the potential for contamination of drinking water supplies, (4) the potential for direct human contact, (5) the potential for destruction of sensitive habitats, (6) State preparedness to assume state costs and responsibilities, and (7) other appropriate factors. The HRS was designed to take into account only those aspects of the above considerations, (generally, considerations (1) through (5)) that reflect the risk of harm existing at releases and that can be quantified for inclusion in a mathematical model. Once an HRS score has been assigned, the additional factors referenced in section 105(8)(A) will be considered in selecting releases for the NPL.

47 Fed. Reg. 31192 (July 16, 1982).

Carrier has examined the rulemaking docket and can find no evidence of consideration of the other required factors. Therefore, as a matter of policy the rulemaking record is incomplete, and the proposed listing of the Carrier Collierville site should be deferred until such time as a description of factors (6) and (7) above has been placed in the public docket and an opportunity for review and comment has been made in accordance with the Administrative Procedure Act, 5 U.S.C. §553.

For these reasons, it is inappropriate for the Agency to insist blindly on its policy against rescoring in the context of the Collierville site. A remedy is being effectuated which will provide an alternative source of drinking water to the wells in which TCE has been detected. Moreover, this remedy, and other ongoing investigations at the site, are being conducted in conjunction with, and at the direction of, responsible local and state authorities. By the Agency's own analysis, the facility is subject to a corrective action order under RCRA. Consequently, if EPA is dissatisfied with the studies and remedies undertaken at the direction of Tennessee authorities, it could seek to impose requirements of its own. As discussed below, additional regulatory mechanisms are available to remediate the site that do not involve the expenditure of CERCLA resources.

Finally, the Agency's expressed purpose for proposing the Collierville site for NPL listing, the desire for prompt remedial action, has been rendered nugatory by the ongoing activities at the site. See 53 Fed. Reg. 23981. It is clearly inappropriate for EPA to attempt to impose as a policy a blanket ban on rescoring sites proposed for NPL listing in cases such as that at Collierville. As noted previously, under the holding of McLouth Steel v. Thomas, supra, the Agency must apply such policies on a case-by-case basis. To do otherwise gives the policy the effect of a rule without having exposed it to the comment opportunities mandated for regulations by the Administrative Procedure Act, 5 U.S.C. §553. A case-by-case application of the policy is clearly appropriate because not all sites fit the model to which the

policy was addressed. Rescoring the Collierville facility to take account of present circumstances at the site would almost certainly reduce its HRS score below the NPL listing threshold. At the same time the concerns that initially led EPA to impose its pre-response scoring policy would not be triggered. Carrier, therefore, urges EPA to rescore the Collierville site rather than including it on the NPL based on the 1986 score.

III. As A Matter of Policy It is Inappropriate for EPA to Include the Collierville Facility on the National Priorities List Because There Is Adequate Alternative Authority to Assure a Correct Remedy at the Site.

Both as a matter of general policy and as a particular application of that policy, Carrier's Collierville facility should not be included on the NPL. Reduced to its most basic form, it should not be Agency policy to sweep sites into the NPL with so wide a broom. The NPL is, by definition, a compilation of priority sites, i.e, those most in need of remediation through the expenditure of Superfund resources. If that list is too large because it contains every arguably-includable site, then, in effect, it contains no priorities. The sites truly in need of prompt, federally-funded remediation will be buried among those that are of less concern.

As a practical matter, moreover, the result of an over-inclusive NPL is a dissipation of Superfund resources. Section 116 of CERCLA, as amended, has imposed a stringent schedule upon EPA for conducting remedial investigations/feasibility studies

and beginning remedial actions at facilities on the NPL.[2/] 42 U.S.C. §9616(d) and (e). For every site like Collierville that is on the NPL even though it is being properly remediated and can be further controlled under other statutory authority, the resources needed to conduct RI/FSs and remedial actions are squandered. As a consequence, the Agency is less likely to meet its mandated deadlines for sites that most merit Superfund expenditure and CERCLA cleanup.

By listing sites such as Collierville, the Agency finds itself in a paradoxical position in which the public interest is not well served. EPA states that converter sites are listed on the NPL because "RCRA's corrective action program currently focuses primarily on treatment, storage, and disposal facilities (due to statutory permitting deadlines in RCRA), and thus EPA has not routinely reviewed converters under RCRA Subtitle C." 53 Fed. Reg. 23981. As a consequence, EPA has proposed listing converter sites "in order to assure that these sites are expeditiously addressed." Id. As demonstrated above, however, exactly the opposite result is likely to occur, because by padding the NPL with sites that can be addressed through other means, or that are, like Collierville, already being remediated, the Agency is assuring that the NPL sites will not be reviewed and/or remediated within the schedule mandated by section 116 of

---

2/ Section 116(d) prescribes that 275 RI/FSs are to be done by October 17, 1989, or failing that, 175 by October 17, 1990, 375 by October 17, 1991, and 650 by October 17, 1991. Section 116(e) requires the commencement of 175 remedial actions by October 17, 1989, and 375 such actions by October 17, 1991.

CERCLA. If the Agency is unlikely to address a site under RCRA due to resource constraints, how likely is it to address it under CERCLA when the resources under that statute are being spread too thin? To shift regulation of converters from the RCRA program to CERCLA, when EPA's CERCLA program apparently does not have the resources sufficiently to respond, does not solve the problem. Because the Collierville site is being adequately addressed at present, it does not belong on the NPL and likewise need not encumber RCRA resources, unless EPA at some time determines that the actions taken by Carrier at the direction of Tennessee authorities are inadequate.

Indeed, EPA has already recognized this position in its policy of not listing on the NPL sites which can be or are being addressed by other state or federal regulatory authority. In the memo from J. Winston Porter to the EPA Administrator, "Red Border Review of the Proposed Revisions to the National Contingency Plan", Mr. Porter states:

> EPA has decided that, as a matter of policy, the NPL generally should include those sites that appear to warrant CERCLA remedial action and cannot be addressed by other regulatory authorities.
>
> EPA believes that it should not supersede the authorities of other Federal and State agencies, unless those authorities are unable to clean up a site.

(Emphasis supplied)

Additionally, on pp 97-99 of the draft preamble to the revised NCP, EPA states that:

> EPA now believes that, as a matter of policy, the NPL should generally include those sites that appear to warrant CERCLA remedial action and cannot be addressed under other regulatory authorities. As explained below, EPA believes this approach is consistant with CERCLA and its legislative history, will make the NPL a more useful management tool for EPA, and will provide more meaningful information to the public and the States.
>
> EPA's interpretation of the NPL as a list that should not include all sites that could potentially be addressed by CERCLA is consistent with the terms of the statute itself.
>
> This interpretation is also consistent with the legislative history. In the House Appropriations Committee Report for Fiscal Year 1988, the conferees expressed some concern over whether Superfund is operating to produce the maximum environmental benefit for the investment: "The Committee wants to reemphasize the overriding principle of the legislation that Superfund should be reserved for the most serious sites not otherwise being addressed." H. Rept. 189, 100th Cong., 1st sess. 27-28 (1987). (emphasis supplied).

On page 109 of the draft NCP preamble, the Agency states:

> EPA does reserve the right to list sites on the NPL if EPA determines that a Federal or State authority is in fact not addressing a deferred site in conformance with their appropriate cleanup standards or in a timely manner.... Further, EPA retains removal and enforcement authorities under CERCLA to achieve cleanup at sites deferred from listing on the NPL during or after a Federal or State authority has taken action.

EPA goes on to state on page 110 of the preamble that the deferral policy will not be implemented until public comments have been considered, and that it will not review sites already

on the NPL. However, EPA also points out that it will review sites "where EPA is presented with evidence that a site on the final NPL is being adequately addressed by another regulatory authority."

Carrier believes that the Carrier Collierville site is a prototypical candidate for deferral under this proposed policy. Further, if listed, it would be eligible for review and delisting as outlined above. To that end, Carrier proposes that EPA either allow the State of Tennessee to retain authority or defer making a decision on listing the Carrier Collierville site until the above policy is finalized and at that time determine the appropriateness of placing the site on the NPL.

Consistent with this policy, there are several alternative statutory authorities besides CERCLA through which investigatory and remedial activities at the Collierville site could be conducted and monitored. The first of these is the authority to issue corrective action orders under section 3008(h) of RCRA, orders which the Agency asserts it is empowered to issue to converter facilities. While Carrier is not agreeing herein to EPA's authority to issue such orders to converters, the RCRA program office certainly can assign priorities and allocate its corrective action resources so as to bring about remediation of sites that require immediate corrective action. To do less would be an abdication of the program's responsibility.

Second, it is possible that the Tennessee State Wellhead Protection Program, being developed under section 1428 of the Safe Drinking Water Act (42 U.S.C. § 300h-7), may provide an

adequate regulatory regime for the Collierville facility. Under this program, each state is to identify sources of contamination and appropriate control measures to protect from contamination each wellhead (the surface and subsurface area surrounding a well or wellfield supplying a public water system). Because the central remedy at the Collierville site involves alternative public water supplies, and other remedial activities may focus on groundwater contamination in the Memphis Sands Aquifer that supplies water to Collierville, EPA should examine this alternative to placement on the NPL and CERCLA remediation.

It is also possible that conditions at the site might make it amenable to an order under section 1431 of the Safe Drinking Water Act.3/ Although it would have to be determined whether the

---

3/ (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to

Continued

statutory criteria permitting issuance of such an order to the Collierville facility exist, this option is worthy of serious consideration. Moreover, it is clear that section 1431 authorizes EPA to require other types of investigatory action that it may find necessary at the site:

> Such orders may be issued to obtain relevant information about impending or actual emergencies, to require the issuance of notice so as to alert the public to a hazard, to prevent a hazardous condition from materializing, to treat or reduce hazardous situations once they have arisen, or to provide alternative safe water supply sources in the event any drinking water source which is relied upon becomes hazardous or unusable.

H.R. Rep. 93-1185, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News, 6454, 6487. See also, U.S. v. Price, 688 F.2d 204, at 214 (3d Cir 1982) ("in terms of the types of relief which may be employed to protect public water supplies, the authority conferred on the courts by section 1431 of SDWA is quite as broad as that conferred by RCRA").

Finally, EPA should consider whether the Tennessee state Superfund statute provides assurances of timely and thorough response sufficient to eliminate the site from inclusion on the NPL. This alternative is particularly worthy of consideration in view of the fact that Carrier has already undertaken investigatory and remedial actions under the direction of the State of Tennessee. These investigatory activities have been underway

---

> the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

42 U.S.C. § 300i.

since 1986, and Carrier has spent substantial sums on consultant studies for the State of Tennessee.

With respect to the effectiveness of Tennessee oversight authority, Carrier Corporation is currently investigating the site under a cooperative agreement with the State of Tennessee and has committed to various interim remedial actions to mitigate the threat of hazardous substance releases during the last stages of its investigation and the implementation of final remedial actions. This cooperative agreement is legally enforceable through issuance of a Commissioner's Order and the filing of a Notice of Lien on the property. The State of Tennessee requires that: "to the maximum extent practicable, any investigation, identification, containment, and clean-up, including monitoring and maintenance, shall be consistent with the national contingency plan promulgated pursuant to Section 105 of Public Law 96-510." Tenn. Code Ann. § 68-46-206(d) (1986).

IV. Conclusion

The Collierville site should not be included on the NPL. As demonstrated above, the HRS scoring upon which the site listing was proposed was in error. Properly scored, the site falls below the 28.50 minimum. Moreover, Carrier is working with state and local officials to provide an alternative drinking water supply. This remedy, as well as additional investigatory activities, are being undertaken with the supervision of appropriate Tennessee regulatory authorities. Further, placement on the NPL and

consequent CERCLA response are also unnecessary because other statutory mechanisms are available that can be used to remediate the site without dissipation of Superfund resources.

Respectfully submitted,

Richard F. Taylor, Jr. by RVR

Richard F. Taylor, Jr.
Vice-President and General Counsel

Arthur W. Kanerviko, Jr. by RVR

Arthur W. Kanerviko, Jr.
Assistant General Counsel
Carrier Corporation
Carrier Parkway
P.O. Box 4800
Syracuse, N.Y. 13221

Timothy A. Vanderver, Jr.
Russell V. Randle
Paul A.J. Wilson
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037

Counsel to Carrier Corporation

EXHIBIT 1

TFIRS Collierville F.D.
Tennessee Fire Incident Report

1 Delete / 2 Revise

A FIRE DEPT ID #: 79216 | INCIDENT NUMBER: 000051 | EXP NO: 00 | MONTH: 06 | DAY: 21 | YEAR: 79 | DAY OF WEEK: Thus | ALARM TIME: 0346 | ARRIVAL TIME: 0357 | CONTROL TIME: 0426 | AVAILABLE: 0441

B CORRECT ADDRESS: 97 South Byhalia | Zip Code: 38017 | Census Tract: 0000010

C OCCUPANT NAME: CARRIER Air Cond. Co. | Telephone: 853976 | Room or Apt: 0

D OWNER NAME: N/A | N/A | N/A

E From public | 3 Municipal alarm system | 4 Radio | Telephone (direct)

F TYPE OF SITUATION FOUND
11 Structure fire; 13 Vehicle fire; 14 Brush, grass fire; 15 Trash, rubbish fire; 16 Explosion/no fire
30 Emergency medical call; 34 Search; 35 Extrication; 39 Rescue not classified; 41 Spill, leak with ignition; 44 Power line down
45 Arcing electric equipment; 46 Aircraft stand by; 47 Chemical emergency; 49 ☑ Hazardous conditions stand by; 53 Smoke odor removal; 61 Smoke scare
60 Controlled burning; 71 Malicious false; 72 Bomb scare; 74 Unintentional false; 99 Not classified

G TYPE OF ACTION TAKEN
1 Extinguishment; 2 Rescue only; 3 Investigation only; 4 ☑ Remove hazard; 5 Stand by; 6 Salvage; 7 Ambulance; 8 Fill in, move up; 9 Not classified; 0 Undetermined
DISTRICT: 0002 | SHIFT: 00C | FIRE MARSHAL: F.M. 1 Yes 2 ✓ No | MUTUAL AID: 1 Rec'd 2 Given

H RESPONSE: PERSONNEL 0017 | ENGINES 03 | AERIALS 00 | SQUADS 00 | TANKERS 00 | GRASS FIRE 00 | AMBULANCES 00 | OTHER 000

I INCIDENT-RELATED INJURIES: FIRE SERVICE 0000 | OTHERS 0000 | INCIDENT-RELATED FATALITIES: FIRE SERVICE 0000 | OTHER 0000

J COMPLEX: Industrial manufacture 70 | FIXED PROPERTY USE: Paved Parking Lot 966

K MOBILE PROPERTY USE: N/A 00 | YEAR 0 | MAKE 0 | MODEL 0 | SERIAL NO 0 | LICENSE NO (if any) 0

L AREA OF FIRE ORIGIN: N/A 98 | TERMINATION STAGE: 2 Smolder stage; 3 Flame stage; 8 ☑ Not a fire

M LEVEL OF FIRE ORIGIN: 1 Grade level; 2 Second story; 3 Third story; 4 Fourth story; 5 Fifth or sixth story; 6 Seventh or above; 7 Objects in flight; 8 Basement; 9 ✓ Not classified; 0 Undetermined

N EQUIPMENT INVOLVED IN IGNITION (IF ANY): NONE 98 | YEAR N/A | MAKE NA | MODEL N/A | SERIAL NO N/A | VOLTAGE N/A

O FORM OF HEAT OF IGNITION: N/A 99 | TYPE OF MATERIAL IGNITED: N/A 98 | FORM OF MATERIAL IGNITED: N/A 98 | IGNITION FACTOR: N/A 99

P STRUCTURE TYPE: 1 Building/one fixed use; 2 Building/two or more uses; 3 Open structure; 5 Tent; 6 Open platform; 7 Underground structure; 8 Not a structure

Q CONSTRUCTION TYPE: 1 Fire resistive; 2 Heavy timbers; 4 Unprotected noncombustible; 5 Protected ordinary; 6 Unprotected ordinary; 8 Unprotected wood frame
CONSTRUCTION METHOD: 1 Site built structure; 2 Factory built, site assembled; 3 Factory built modular; 4 Factory built mobile; 9 Not classified; 0 Undetermined

R EXTENT OF DAMAGE (FLAME / SMOKE / WATER / FIRE CONTROL): Confined to the object of origin; Confined to part of room or area of origin; Confined to room of origin; Confined to the fire-rated comp. of origin; Confined to floor of origin; Confined to structure of origin; Extended beyond structure of origin; Not a structure fire; No damage of this type

DETECTOR PERFORMANCE: 1 Detector in room or space of fire origin operated; 2 Detector not in room or space of fire origin operated; 3 Detector in room or space of fire origin did not operate; 4 Detector not in room or space of fire origin did not operate; 5 Detector in room or space of fire origin, fire too small to operate; 8 No detectors present; 9 Performance of fire detection equipment not classified above

SPRINKLER PERFORMANCE: 1 Equipment operated; 2 Equipment should have operated/did not; 3 Equipment present-fire too small to require operation; 8 No equipment present in room or space of fire origin; 9 Performance of automatic extinguishing equipment not classified

S IF FLAME SPREAD BEYOND ROOM OR ORIGIN: Type of Material Generating Most Flame | Avenue of Flame Travel

T IF SMOKE SPREAD BEYOND ROOM OF ORIGIN: Type of Material Generating Most Smoke | Avenue of Smoke Travel

U METHOD OF EXTINGUISHMENT: 1 Self extinguished; 2 Make shift aids; 3 Portable extinguisher; 4 Automatic extinguishing system; 5 Pre-connect hoselines only; 6 Pre-connect hose/hydrant draft standpipe; 7 Hand-laid hose/hydrant draft standpipe; 8 Master stream device

V ESTIMATED TOTAL DOLLAR LOSS: 00000000 | PROPERTY INSURED yes X no | Insurer | PROPERTY DAMAGE CLASSIFICATION: 1 $1-$99; 2 $100-$999; 3 $1,000-$9,999; 4 $10,000-$24,999; 5 $25,000-$49,000; 6 $50,000-$249,999; ☒

Check box [ ] if remarks are made on back

W OFFICER IN CHARGE (Name, Position, Assignment) | Date

MEMBER MAKING REPORT (if different from above): Buddy Billings PVT. | Date

DMS-5020 10